In the Supreme Court of the United States

OCTOBER TERM, 1965

No. 291

UNITED STATES OF AMERICA, APPELLANT

v.

STANDARD OIL COMPANY

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF FLORIDA

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION TO THE MOTION TO DISMISS

On July 26, 1965, appellee, Standard Oil Company, filed a motion to dismiss or affirm urging, *inter alia*, that the government's appeal be dismissed on the grounds that the notice of appeal did not include proof of service and that, in fact, the notice of appeal was not served as required by Rules 10 and 33 of the Rules of this Court.

It is true, we find, that the government failed to serve notice of the appeal on appellee. However, appellee does not claim that it has been prejudiced by

this inadvertent omission, nor would the facts support such a contention. The record consisted only of the information, a short agreed stipulation of facts and the opinion of the court below. The issue involved was clearly and unambiguously defined from the beginning. Appellee was mailed a copy of the district court's letter of transmittal of the record to this Court when the notice of appeal was filed and was promptly served with the government's Jurisdictional Statement. Time between the terms of this Court permits more than adequate opportunity for appellee to meet the government's position on the merits.

We accordingly submit that the absence of prejudicial circumstances and the substantial nature of the question presented warrant consideration of the case on the merits. The defect, of course, is not jurisdictional.

RALPH S. SPRITZER,
Acting Solicitor General.

AUGUST 1965

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